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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,293	10/25/2000	Jeanne Bernstein	2786-0140P	9369

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EXAMINER

KETTER, JAMES S

ART UNIT	PAPER NUMBER
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1636

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/695,293

Applicant(s)

BERNSTEIN ET AL.

Examiner

James S. Ketter

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-3,6-11 and 14-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4,5,12,13,35 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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This non-final Office Action is in response to the agreement with Applicants, noted by Applicants in the response filed 15 July 2004, to issue a non-final action to clarify the applicability of the rejections to claims 35 and 36. As such, this action largely repeats the text of the previous Office Action mailed 16 June 2004.

Claims 1-3, 6-11 and 14-34 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 13.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4, 5, 12 and 13 stand, and newly added 35 and 36 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a credible asserted utility or a well established utility, for reasons of record set forth in Papers Nos. 14 and 16, mailed 28 January 2003 and 20 October 2003, respectively.

Claims 4, 5, 12 and 13 also stand, and newly added 35 and 36 are rejected under 35 U.S.C. 112, first paragraph, for reasons of record set forth in Papers Nos. 14 and 16, mailed 28 January 2003 and 20 October 2003, respectively.

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In the amendment filed 20 April 2004, Applicants merely repeat the arguments presented in the amendment filed 28 July 2003, which were addressed in the Final Rejection mailed 20 October 2003. Newly filed claims 35 and 36, being part of the invention examined on the record, are similarly rejected for the reasons of record.

Applicant's arguments filed 20 April 2004 have been fully considered but they are not persuasive.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 5, 12 and 13 stand rejected under 35 U.S.C. 102(b) as being anticipated by Arriza et al. (U), for reasons of record set forth in Papers Nos. 14 and 16, mailed 28 January 2003 and 20 October 2003, respectively.

In the amendment filed 20 April 2004, Applicants merely repeat the arguments presented in the amendment filed 28 July 2003, which were addressed in the Final Rejection mailed 20 October 2003.

Applicant's arguments filed 20 April 2004 have been fully considered but they are not persuasive.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 5, 12 and 13 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for reasons of record set forth in Papers Nos. 14 and 16, mailed 28 January 2003 and 20 October 2003, respectively.

In the amendment filed 20 April 2004, Applicants merely repeat the arguments presented in the amendment filed 28 July 2003, which were addressed in the Final Rejection mailed 20 October 2003.

Applicant's arguments filed 20 April 2004 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the Examiner with respect to the examination on the merits should be directed to James Ketter whose telephone number is (571) 272-0770. The Examiner normally can be reached on M-F (9:00-6:30), with alternate Fridays off.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Remy Yucel, can be reached at (571) 272-0781.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Jsk
September 29, 2004



JAMES KETTER
PRIMARY EXAMINER